

## Attachment C

CONTRACT NO. XX-XXX-XXX

### SAMPLE Software Contract

Between the  
**Department of Retirement Systems**  
and  
**Vendor**

This Contract is made and entered into by and between the state of Washington, Department of Retirement Systems, hereafter referred to as "Agency," and Vendor, hereafter referred to as "Vendor:"

<b>Vendor Name</b>	Vendor
<b>Address</b>	
<b>City, State &amp; Zip Code</b>	
<b>Phone</b>	
<b>E-mail Address</b>	
<b>Washington State UBI No.</b>	
<b>Federal ID No</b>	

### PURPOSE

The purpose of this contract is to purchase [description] software.

### PERIOD OF PERFORMANCE

The period of performance under this contract will be from [date], or date of Agency execution, whichever is later, through [date], unless sooner terminated or extended as provided under Exhibit A, General Terms and Conditions.

## **COMPENSATION**

Agency will pay an amount not to exceed DOLLARS and CENTS for the performance of all things necessary for or incidental to the [description] software. Vendor's compensation for services rendered will be based on the schedule set forth in the Request for Qualifications and Quotations (Exhibit B) and Vendor's proposal attached as Exhibit C.

## **BILLING PROCEDURES AND PAYMENT**

Agency will pay Vendor upon receipt and acceptance of software. Vendor will submit to the Agency Contract Manager properly completed invoices not more often than annually. The invoices will describe and document, to the Agency's satisfaction, a description of the services provided and associated fees. The invoice will reference Contract No. XX-XXX-XXX.

Payment will be considered timely if made by the Agency within thirty (30) calendar days after receipt of properly completed invoices. Payment will be sent to the address designated by the Vendor.

The Agency may, in its sole discretion, terminate the contract or withhold payments claimed by the Vendor for services rendered if the Vendor fails to satisfactorily comply with any term or condition of this contract.

No payments in advance or in anticipation of services or supplies to be provided under this contract will be made by the Agency.

## **CONTRACT MANAGEMENT**

The Contract Manager for each of the parties will be the contact person for all communications and billings regarding the performance of this contract.

<b>Work Contract Manager for Vendor is:</b>	<b>Work Contract Manager for Agency is:</b>
<b>Contact:</b> _____	<b>Contact:</b> _____
<b>Vendor Name:</b> _____	<b>Agency Name:</b> _____
<b>Address:</b> _____	<b>Address:</b> _____
<b>City, State, Zip:</b> _____	<b>City, State, Zip:</b> _____
<b>Phone:</b> _____	<b>Phone:</b> _____
<b>Fax:</b> _____	<b>Fax:</b> _____
<b>Email Address:</b> _____	<b>Email Address:</b> _____

## **PATENT & COPYRIGHT INDEMNIFICATION**

Vendor, at its expense, shall defend, indemnify, and save Purchaser harmless from and against any claims against Purchaser that any Product supplied hereunder, or Purchaser's use of the Product within the terms of this Contract, infringes any patent, copyright, utility

model, industrial design, mask work, trade secret, trademark, or other similar proprietary right of a third party worldwide. Vendor shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by Purchaser provided that Purchaser:

- a) Promptly notifies Vendor in writing of the claim, but Purchaser's failure to provide timely notice shall only relieve Vendor from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to Vendor; and
- b) Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Vendor sole control of the defense and all related settlement negotiations.

If such claim has occurred, or in Vendor's opinion is likely to occur, Purchaser agrees to permit Vendor, at its option and expense, either to procure for Purchaser the right to continue using the Product or to replace or modify the same so that they become non-infringing and functionally equivalent. If use of the Product is enjoined by a court and Vendor determines that none of these alternatives is reasonably available, Vendor, at its risk and expense, will take back the Product and provide Purchaser a refund. In the case of Product, Vendor shall refund to Purchaser its depreciated value. No termination charges will be payable on such returned Product, and Purchaser will pay only those charges that were payable prior to the date of such return. Depreciated value shall be calculated on the basis of a useful life of XX years commencing on the date of purchase and shall be an equal amount per year over said useful life. The depreciation for fractional parts of a year shall be prorated on the basis of three hundred sixty-five (365) days per year. In the event the Product has been installed less than one (1) year, all costs associated with the initial installation paid by Purchaser shall be refunded by Vendor.

Vendor has no liability for any claim of infringement arising solely from:

- a) Vendor's compliance with any designs, specifications or instructions of Purchaser;
- b) Modification of the Product by Purchaser or a third party without the prior knowledge and approval of Vendor; or
- c) Use of the Product in a way not specified by Vendor;

unless the claim arose against Vendor's Product independently of any of these specified actions.

### **SOFTWARE LICENSE**

Vendor grants to Agency a non-exclusive, perpetual license to use the Software and related documentation according to the terms and conditions of this Contract.

The Agency will not decompile or disassemble any Software provided under this Contract or modify Software that bears a copyright notice of any third party without the prior written consent of Vendor or Software owner.

The Agency will make and maintain no more than one [or other agreed upon number] archival copy of each item of Software, and each copy will contain all legends and notices and will be subject to the same conditions and restrictions as the original. Agency may also make copies of the Software in the course of routine backups of hard drive(s) for the purpose of recovery of hard drive contents. Agency may use backup or archival copies of the Software, without reinstallation or interruption of production copy(ies), for disaster recovery exercises at its disaster recovery site(s), without additional charge. Agency may make these backup or archival copies available to the disaster recovery site(s)' employees who require use of the Software in order to assist the Agency with disaster recovery exercises. Agency agrees that production use of the Software at the disaster recovery site(s) shall be limited to times when the Agency's facilities, or any portion thereof, are inoperable due to emergency situations.

**Business or Support Termination Rights** – In the event that Vendor shall, for any reason, cease to conduct business, or cease to support the Software licensed under this Contract, the Agency shall have a right to convert the Software licenses into perpetual licenses, with rights of quiet enjoyment, but subject to payment obligations not to exceed the Contract Prices.

**Freedom of Use** – Vendor understands that the Agency may provide information processing services to other users that are agencies of state government and other tax-supported entities. Vendor further understands that the Agency or other users that are agencies of state government and other tax-supported entities may provide services to the public through Internet applications. Software delivered hereunder may be used in the delivery of these services. Vendor acknowledges and agrees that such use of Software products is acceptable under the licensing agreements contained herein.

## **SOFTWARE OWNERSHIP**

Vendor shall maintain all title, copyright, and other proprietary rights in the Software. The Agency does not acquire any rights, express or implied, in the Software, other than those specified in this Contract. Vendor hereby warrants and represents to Agency that Vendor is the owner of the Software licensed hereunder or otherwise has the right to grant to Agency the licensed rights to the Software provided by Vendor through this Contract without violating any rights of any third party worldwide. Vendor represents and warrants that Vendor has the right to license the Software to Agency as provided in this Contract and that Agency's use of the Software and documentation within the terms of this Contract will not infringe upon any copyright, patent, trademark, or other intellectual property right worldwide or violate any third party's trade secret, contract, or confidentiality rights worldwide. Vendor represents and warrants that: (i) Vendor is not aware of any claim, investigation, litigation, action, suit or administrative or judicial proceeding pending or threatened based on claims that the Software infringes any patents, copyrights, or trade secrets of any third party, and (ii) that Vendor has no actual knowledge that the Software infringes upon any patents, copyrights, or trade secrets of any third party.

## **SOFTWARE SPECIFICATIONS**

All Software will conform to its Specifications. Vendor warrants that the Product(s) delivered hereunder shall perform in conformance with the Specifications.

## **DATE WARRANTY**

Vendor warrants that all Software provided under this Contract: (i) does not have a life expectancy limited by date or time format; (ii) will correctly record, store, process, and present calendar dates; (iii) will lose no functionality, data integrity, or performance with respect to any date; and (iv) will be interoperable with other software used by Purchaser that may deliver date records from the Software, or interact with date records of the Software ("Date Warranty"). In the event a Date Warranty problem is reported to Vendor by Agency and such problem remains unresolved after three (3) calendar days, at Agency's discretion, Vendor shall send, at Vendor's sole expense, at least one (1) qualified and knowledgeable representative to Agency's premises. This representative will continue to address and work to remedy the failure, malfunction, defect, or nonconformity on Agency's premises. This Date Warranty shall last perpetually. In the event of a breach of any of these representations and warranties, Vendor shall indemnify and hold harmless Agency from and against any and all harm, injury, damages, costs, and expenses incurred by Agency arising out of said breach.

## **NO SURREPTITIOUS CODE WARRANTY**

Vendor warrants to Agency that no licensed copy of the Software provided to Agency contains or will contain any Self-Help Code nor any Unauthorized Code as defined below. Vendor further warrants that Vendor will not introduce, via modem or otherwise, any code or mechanism that electronically notifies Vendor of any fact or event, or any key, node, lock, time-out, or other function, implemented by any type of means or under any circumstances, that may restrict Agency's use of or access to any program, data, or equipment based on any type of limiting criteria, including frequency or duration of use for any copy of the Software provided to Agency under this Contract. The warranty is referred to in this Contract as the "No Surreptitious Code Warranty."

As used in this Contract, "Self-Help Code" means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than a licensee of the Software. Self-Help Code does not include software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g., remote access via modem) solely for purposes of maintenance or technical support.

As used in this Contract, "Unauthorized Code" means any virus, Trojan horse, worm or other software routines or equipment components designed to permit unauthorized access, to disable, erase, or otherwise harm Software, equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code.

Vendor will defend Agency against any claim, and indemnify Agency against any loss or expense arising out of any breach of the No Surreptitious Code Warranty. No limitation of liability, whether contractual or statutory, shall apply to a breach of this warranty.

### **SOFTWARE DOCUMENTATION**

Vendor will provide access to complete Software documentation to include **Software Upgrades and Enhancements**. Vendor shall provide the documentation on or before the date Vendor delivers its respective Software. There shall be no additional charge for this documentation or the updates, in whatever form provided. Vendor's Software documentation shall be comprehensive, well structured, and indexed for easy reference. If Vendor maintains its technical, maintenance and installation documentation on a web site, Vendor may fulfill the obligations set forth in this section by providing Purchaser access to its web-based documentation information. Vendor may also provide such information on CD-ROM. Vendor grants Purchaser the right to make derivative works, update, modify, copy, or otherwise reproduce the documentation furnished pursuant to this section at no additional charge.

### **ASSURANCES**

Agency and the Vendor agree that all activity pursuant to this contract will be in accordance with all the applicable current federal, state and local laws, rules, and regulations.

### **ORDER OF PRECEDENCE**

**Each of the exhibits listed below is by this reference hereby incorporated into this contract. In the event of an inconsistency in this contract, the inconsistency will be resolved by giving precedence in the following order:**

1. Applicable Federal and state of Washington statutes and regulations;
2. Special Terms and Conditions as contained in this basic contract instrument;
3. Contract Exhibit 1 – General Terms and Conditions;
4. Contract Exhibit 2 – Request for Qualifications and Quotations, No. 13-004-102;
5. Contract Exhibit 3 – Vendor's Proposal dated DATE; and
6. Any other provision, term, or material incorporated herein by reference or otherwise incorporated.

### **ENTIRE AGREEMENT**

This contract, including referenced exhibits, represents all the terms and conditions agreed upon by the parties. No other statements or representations, written or oral, will be deemed a part hereof.

### **CONFORMANCE**

If any provision of this contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

## **APPROVAL**

This contract will be subject to the written approval of the Agency's authorized representatives and will not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

This contract, consisting of X pages and X exhibits, is executed by the persons signing below, who warrant they have the authority to execute the contract.

### **Vendor**

### **Department of Retirement Systems**

SAMPLE ONLY – Do not sign!  
Name \_\_\_\_\_ *date* \_\_\_\_\_  
Title \_\_\_\_\_

\_\_\_\_\_  
Name \_\_\_\_\_ *date* \_\_\_\_\_  
Title \_\_\_\_\_